

REMARKS

This is in full and timely response to the Decision on Appeal dated April 30, 2009.

Claims 6, 9, 13, 14, 15, and 23 are currently pending in this application, with claims 6, 9, 13, 14, 15, and 23 being independent.

No new matter has been added.

Reexamination in light of the following remarks is respectfully requested.

I. Reversal of the rejection of claims 1-24

Reversal of claims 1-3 and 16-18 - Page 2 of the Final Office Action of August 10, 2004 indicates a rejection of claims 1-3 and 16-18 under 35 U.S.C. §102 as allegedly being anticipated by U.S. Patent No. 4,576,344 to Sasaki et al. (Sasaki).

Within the Decision on Appeal of April 30, 2009, the Board of Patent Appeals and Interferences ("the Board") has **reversed** the Final Rejection as to the rejection of claims 1-3 and 16-18.

Reversal of claims 4-15 and 19-24 - Page 2 of the Final Office Action of August 10, 2004 indicates a rejection of claims 4-15 and 19-24 under 35 U.S.C. §103 as allegedly being unpatentable over Sasaki.

The Board additionally **reversed** the Final Rejection as to the rejection of claims 4-15 and 19-24.

II. New ground of rejection

While the Board has *reversed* the rejection of claims 1-24 made within the Final Office Action of August 10, 2004, a new ground of rejection has been entered by the Board as to claims 1-5, 12, 16-22, and 24.

III. Option to reopen prosecution is exercised

Pursuant to 37 C.F.R. §41.50(b), when the Board makes a new ground of rejection, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) Reopen prosecution.

(2) Request rehearing.

The new ground of rejection is binding upon the examiner unless an amendment or new evidence not previously of record is made which, in the opinion of the examiner, overcomes the new ground of rejection stated in the decision. 37 C.F.R. §41.50(b).

While not conceding to the propriety of this new ground of rejection, and in order to advance the prosecution of the present application, this Amendment includes the cancellation of newly rejected claims 1-5, 12, 16-22, and 24, along with the cancellation of claims 7-8 and 10-11.

No rejection of claims 6, 9, 13-15, and 23 is currently present within the instant application. Accordingly, claims 6, 9, 13-15, and 23 have been placed into independent form and remain pending.

This Amendment is believed to overcome the new ground of rejection stated in the Decision. 37 C.F.R. §41.50(b)(1).

IV. No rejection of claims 6, 9, 13-15, and 23

A new ground of rejection has been entered by the Board as to claims 1-5, 12, 16-22, and 24. Pursuant to 37 C.F.R. §41.50(b), a new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.

However, this Amendment includes the cancellation of claims 1-5, 12, 16-22, and 24, the subject within the Decision of the new ground of rejection.

The Board has reversed the rejection of claims 6, 9, 13-15, and 23 without the entry of a new ground of rejection as to these claims.

Claims 6, 9, 13-15, and 23 remain in the present application as the pending claims.

U.S. Patent practice and procedures pursuant to 37 C.F.R. §1.198 dictate that:

When a decision by the Board of Patent Appeals and Interferences on appeal has become final for judicial review, prosecution of the proceeding before the primary examiner **will not be reopened or reconsidered** by the primary examiner except under the provisions of § 1.114 or § 41.50 of this title **without the written authority of the Director**, and then **only for the consideration of matters not already adjudicated**, sufficient cause being shown.

No rejection of claims 6, 9, 13-15, and 23 is currently present within the instant application. In the absence of any rejection, this Amendment includes the placement of claims 6, 9, 13-15, and 23 into independent form.

It is respectfully submitted that prosecution of claims 6, 9, 13-15, and 23 should not be reopened or reconsidered by the primary examiner without the written authority of the Director, and then only for the consideration of matters not already adjudicated, sufficient cause being shown. 37 C.F.R. §1.198.

Allowance of claims 6, 9, 13-15, and 23 is respectfully requested.

V. Conclusion

This response is believed to be a complete response to the Decision on Appeal.

For the foregoing reasons, all the claims now pending in the present application are allowable, and the present application is in condition for allowance.

Accordingly, favorable reexamination and reconsideration of the application in light of the remarks is courteously solicited.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone Brian K. Dutton, Reg. No. 47,255, at 202-955-8753.

Dated: June 23, 2009

Respectfully submitted,

By 

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